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UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re

LESLIE KLEIN,

Debtor.

Case No.: 2:23-bk-10990-SK

Chapter 11

**MOTION OF CHAPTER 11 TRUSTEE, FOR
ORDER AUTHORIZING THE
EXAMINATION OF PHOENIX LIFE
INSURANCE COMPANY PURSUANT TO
FED. R. BANKR. P. 2004; MEMORANDUM
OF POINTS AND AUTHORITIES;
DECLARATIONS OF BRADLEY D. SHARP,
NICHOLAS R. TROSZAK AND JEFFREY P.
NOLAN IN SUPPORT THEREOF**

**[FED. R. BANKR. P. 2004 AND L.B.R.
2004-1]**

[No Hearing Required]

**TO THE HONORABLE SANDRA R. KLEIN, UNITED STATES BANKRUPTCY JUDGE;
THE OFFICE OF THE UNITED STATES TRUSTEE; THE PROPOSED EXAMINEE; AND
PARTIES ENTITLED TO NOTICE HEREOF:**

PLEASE TAKE NOTICE THAT Bradley D. Sharp, the duly appointed chapter 11 trustee (the “Trustee” or “Applicant”) of the bankruptcy estate (the “Estate”) of Leslie Klein (the “Debtor”), pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure (“Rule 2004”) and Local Bankruptcy Rule 2004-1 (“LBR 2004-1”), hereby moves the Court (the “Motion”) for an Order

1 requiring that **Phoenix Life Insurance Company**, (“Phoenix” or Proposed Examinee”) produce
2 documents and answer written questions pursuant to Rule 7031, as agreed to as follows: **February**
3 **5, 2024**, for production of documents and testimony, or as otherwise consensually agreed to by the
4 parties.

5 **I.**

6 **PRELIMINARY STATEMENT**

7 The Motion is made on the grounds that pre-petition, the Debtor, was appointed and
8 represented multiple trusts in his capacity as an attorney and a fiduciary. Numerous of his former
9 clients have filed complaints over the past eight (8) years in the Superior Court of California, Los
10 Angeles County (“Superior Court”) in which they allege monies were diverted by the Debtor,
11 utilized for improper purposes, and which sums are unaccounted for despite orders to show cause
12 issued from the Superior Court.

13 As an attorney, trustee and fiduciary, the Debtor would invest his clients’ monies and his
14 personal funds in life insurance policies which paid out death benefits in the millions of dollars.
15 Creditors have alleged that their funds were improperly diverted or invested in various death benefit
16 policies without their knowledge. While the existence of some policies are known, many others are
17 not and the Debtor has indicated he maintained little to no hard copies of financial records, insurance
18 records, and personal records of these dealings and the investments placed. Investigation into the
19 Proposed Examinee may give rise to policies, surrounding facts, damages, and/or property
20 recoverable by the Debtor’s bankruptcy estate.

21 Non-Dischargeability complaints were subsequently filed before the Bankruptcy Court
22 alleging similar fact patterns accusing the Debtor of utilizing multiple accounts to improperly make
23 investments, collateralize investments, and/or divert monies for personal use without the permission
24 of the beneficiaries whom entrusted said funds to the Debtor. Investigation into the Proposed
25 Examinee may give rise to the facts and claims alleged in the bankruptcy estate.
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27
28

II

BACKGROUND

Procedural Background and Filing of the Cases:

On February 22, 2023, the Debtor filed a voluntary petition for relief under subchapter V of Chapter 11 of the Bankruptcy Code.

On April 24, 2023, creditors Erica and Joseph Vago filed a *Motion for Order Dismissing Debtor's Chapter 11 Bankruptcy Case* (the "Motion to Dismiss") [Docket No. 79].

On May 17, 2023, at a hearing held on the Motion to Dismiss, the Court ruled that the appointment of a chapter 11 trustee, and not dismissal of the case, was in the best interests of the estate.

On May 23, 2023, the UST filed a *Notice of Appointment of Chapter 11 Trustee* [Docket No. 151].

On May 24, 2023, the UST Filed an *Application for Order Approving Appointment of Trustee and Fixing Bond* [Docket No. 154], approved by order entered the same day [Docket No. 155]. On that same day, the Trustee accepted his appointment [Docket No. 156].

This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

Factual Background:

On August 27, 2021, Plaintiff, ADI Vendriger, individually and on behalf of the Vendriger Family Trust, filed a complaint against the Debtor and the law firm of Les Klein & Associates, Inc. (the "Law Firm") asserting various tort causes of action, including fraud, conversion of property, and money had and received. The complaint alleges multiple improper acts by the Debtor including comingling and misappropriation of funds. (See State Court Complaint for (1) Fraud; (2) Breach of Fiduciary Duty; (3) Conversion; (4) Money Had And Received; (5) Unjust Enrichment and (6) Accounting (the "Vendriger Complaint"), ¶¶ 24, 25, 28, attached hereto as **Exhibit A.**) On April 10, 2023, a Notice of Stay of Proceedings was filed.

On August 29, 2022, a referee appointed by the Superior Court issued an 84 page "Report and Recommendation of the Court-Appointed Referee on Examination and Adjudication of the

1 Trustee's First, Second, and Third Accountings On Each of the Twenty-Four Trusts At Issue For the
2 Trust Periods September 10, 1996-June 30, 2013, July 1, 2013-December 31, 2016 And January 1,
3 2017-September 30, 2018" (the "Referee's Report", attached to the Declaration of J. Nolan as
4 **Exhibit B**). The Referee's Report outlines a multitude of improper acts taken by the Debtor
5 including the transfer and misappropriation and commingling of funds. (See **Exhibit B**, p. 21) Large
6 financial disparities were noted to exist between what the Debtor claimed was disbursed to
7 beneficiaries and ultimately what the beneficiaries documented they received. (See **Exhibit B**, p. 18,
8 ft. note 21)

9 On May 10, 2013, Plaintiffs Erica and Joseph Vago, filed a Complaint to Determine the
10 Nondischargeability of Certain Debts owed by Debtor Leslie Klein to Erica and Joseph Vago
11 Pursuant to 11 U.S.C. §523, and To Deny Discharge Pursuant to Section 727(A)(12) (See Complaint
12 for Nondischargeability (the "Vago Complaint") against the Debtor attached to the Declaration of J.
13 Nolan as **Exhibit C**) The Vago Complaint alleges that the Vagos' moved 15MM in funds to the care
14 of the Debtor between 2013 and 2017. (See **Exhibit C**, ¶¶17, 26) In 2019, the Vagos demanded
15 their monies be returned and the Debtor refused. (See **Exhibit C**, ¶¶36, 37) The Vago Complaint
16 alleges that the Debtor commingled trust funds with his personal funds. (See **Exhibit C**, ¶46) The
17 Vago Complaint attaches a judgment in the amount of \$24,334,038 as against the Debtor.

18 On May 12, 2023, Plaintiffs, Robert and Esther Mermelstein filed Complaint for
19 Nondischargeability of Debt Pursuant to 11 U.S.C. §523(a)(2)(A), 11 U.S.C. §523(a)(4) & 11 U.S.C.
20 §523(a)(6) & for Denial Of Discharge Pursuant to 11 USC §727(a)(2)(A); 11 USC §727(a)(2)(B); 11
21 USC §727(a)(3); 11 USC §727(a)(4); 11 USC §727(a)(5) the "Mermelstein Complaint") (See
22 Declaration of J. Nolan as **Exhibit D**, ¶¶17, 21, 24, 28, 32). Several of the investment opportunities
23 resulted in significant recoveries to the Debtor which sums are alleged to have been converted by the
24 Debtor and concealed from the Mermelstein beneficiaries. (See Mermelstein Complaint, ¶¶14, 20,
25 31). The Mermelstein Plaintiffs have filed proofs of claims in the Bankruptcy Case exceeding
26 \$13,000,000. (See Mermelstein Complaint, ¶41).

27 On May 13, 2020, the California Board of Accountancy, Department of Consumer Affairs,
28 State of California, issued its Decision and Order in which the Debtor surrendered his license. (See

Decision and Order, Stipulated Surrender of License and Order and Accusation attached to the Declaration of J. Nolan as **Exhibit E**). The accusation documents the Debtor issuing promissory notes in the name of the Debtor, entities in which he owned a substantial interest or controlled, as well as mischaracterizing investments to clients which in reality were merely non-recourse loans utilizing the Law Firm and Law Firm IOLTA Account. The Debtor caused to be issued promissory notes and utilized the funds as he alone directed. (See **Exhibit E**, Accusation, ¶¶ 19(iv), 22(d)).

In the single in-person meeting with the Trustee and representatives of the Trustee, the Debtor claimed he did not maintain financial records. (See Declaration of B. Sharp, ¶3; Declaration of N. Troszak, ¶3) This response is consistent with a finding by the referee in the Menlo case that the Debtor “had no legitimate recordkeeping system”. (See **Exhibit B**, p. 23, Ins. 15-18)

Since June 8, 2023, the Trustee has requested various financial documents including bank statements, disclosure and reports of entities which the Debtor holds a financial interest, and information surrounding various life insurance policies and their proceeds as invested by the Debtor. (See Correspondence dated June 8, 2023, attached to the Declaration of J. Nolan, as **Exhibit F**, ¶8; See email dated June 28, 2023, attached hereto as **Exhibit G**). The demands have been repeated to multiple counsel on behalf of the Debtor and requested in open court. The requests have not resulted in the production of meaningful financial records. (See email dated July 10, 2023, attached to the Declaration of J. Nolan as **Exhibit H**).

III

THE TRUSTEE IS ENTITLED TO A RULE 2004 ORDER UNDER APPLICABLE LAW

Bankruptcy Rule 2004 provides that “[o]n motion of any party in interest, the court may order the examination of any entity.” Fed. R. Bankr. P. 2004(a). Examinations under Bankruptcy Rule 2004 include within their scope, *inter alia*, any matter that may relate to the property and assets of the estate, the financial condition of the debtor, and any matter that may affect the administration of a debtor’s estate, or to the debtor’s right to a discharge. See Fed. R. Bankr. P. 2004(b). In addition, the attendance of a person at an examination may be ordered by the Court “at any time or place it designates, whether within or without the district court wherein the case is pending.” Fed. R.

1 Bankr. P. 2004(d). The Bankruptcy court has broad discretion in issuing a 2004 examination. *In re*
2 *Deshetler*, 435 B.R. 295, 302 (Bankr. S.D. Ohio 2011)

3 It is the debtor's duty to provide the required information of creditors and assets to a trustee
4 which is crucial to the working of the bankruptcy system. *Clippard v. Russell (In re Russell)*, 392
5 B.R. 315, 358 (Bankr. E.D. Tenn. 2008) the required information is needed for a variety of purposes
6 in the administration of the bankruptcy case. *Id.* The debtor's obligation to provide the required
7 information is a cost imposed on the debtor for the benefit of obtaining bankruptcy relief. *Id.*

8 The Debtor has failed (or refused) to produce various financial records to support claims
9 made to the Trustee and/or evidence of the financial condition despite multiple requests. (See
10 Declaration of N. Troszak, ¶13.) This list includes: bank statements, financial statements for the
11 purchase of life insurance policy premiums, credit card statements, access to his computers,
12 disclosure of entities in which he holds a financial interest, and the list goes on. The lack of
13 meaningful production of financial records produced to the Trustee means the Trustee must seek the
14 financial information from third parties. Similarly, the plethora of claims by creditors in the estate,
15 as well as various findings from sister courts and litigation pending therein, describe a picture of
16 commingling and diversion of funds.

17 The purpose of a Bankruptcy Rule 2004 examination is “to allow inquiry into the debtor’s
18 acts, conduct or financial affairs so as to discover the existence or location of assets of the estate.”
19 *In re Dinbilo*, 177 B.R. 932, 940 (E.D. Cal. 1993); see also *In re N. Plaza LLC*, 395 B.R. 113, 122,
20 n. 9 (S.D. Cal. 2008) (purpose of Bankruptcy Rule 2004 examination is “discovering assets and
21 unearthing frauds”) (internal citations omitted); *In re Fearn*, 96 B.R. 135, 138 (Bankr. S.D. Ohio
22 1989) (rule’s primary purpose is to ascertain “the extent and location of the estate’s assets [and]
23 examination is not limited to the debtor or his agents, but may properly extend to creditors and third
24 parties who have had dealings with the debtor.”) (internal citations omitted). In addition,
25 Bankruptcy Rule 2004 is a discovery tool that can be used as a pre-litigation device to determine
26 whether there are grounds to bring an action to determine a debtor’s right to discharge a particular
27 debt. See *In re Corso*, 328 B.R. 375, 383 (E.D.N.Y. 2005).

1 The scope of an examination permitted under Bankruptcy Rule 2004 is “exceptionally
2 broad.” *In re N. Plaza LLC*, 395 B.R. at 122 n. 9; see also *In re W&S Investments, Inc.* 1993 U.S.
3 App. LEXIS 2231 at *6 (9th Cir. Jan. 28, 1993) (“The scope of inquiry permitted under a Rule 2004
4 examination is generally very broad and can legitimately be in the nature of a ‘fishing expedition.’”)
5 (internal citations omitted). This broad inquiry extends to third parties as well: “Because the
6 purpose of the Rule 2004 investigation is to aid in the discovery of assets, any third party who can be
7 shown to have a relationship with the debtor can be made subject to a Rule 2004 investigation.” *In*
8 *re Ionosphere Clubs, Inc.*, 156 B.R. 414, 432 (S.D.N.Y. 1993); see also *In re Mittco, Inc.*, 44 B.R.
9 35, 36 (Bankr. D. Wis. 1984) (“When there is a showing that the purpose of the examination is to
10 enable a party to probe into matters which may lead to the discovery of assets by examining not only
11 the debtor, but also other witnesses, such inquiry is allowed.”). This is because “[t]he clear intent of
12 Rule 2004 . . . is to give parties in interest an opportunity to examine individuals having knowledge
13 of the financial affairs of the debtor in order to preserve the rights of creditors.” *In re GHR*
14 *Companies, Inc.*, 41 B.R. 655, 660 (Bankr. D. Mass. 1984). “The purpose of the Rule 2004
15 investigation is to aid in the discovery of assets, any third party who can be shown to have a
16 relationship with the debtor can be made subject to a Rule 2004 investigation.” *In re Ionosphere*
17 *Clubs, Inc.*, 156 B.R. 414, 432 (Bankr. S.D.N.Y. 1993), *aff’d*, 17 F.3d 600 (2d Cir. 1994).

18 In the present case, good cause exists to issue the subpoena as the Trustee must locate
19 reliable records to determine the financial affairs and condition of the Debtor in order to preserve the
20 rights of creditors. The Debtor’s statements that he does not maintain financial records regarding his
21 acts, conduct, investments, property and financial conditions means the Trustee must go to third
22 parties. (See Declaration of N. Troszak, §3) There has been a litany of state court filings and
23 litigation, including findings of fact, calling in to question conduct of the Debtor and his financial
24 dealings. Various findings during litigation document the commingling of monies, investments, and
25 trust accounts. Allegations of misappropriation of funds and the establishment of lines of credit to
26 burden or securitize assets of clients call into question business conducted by the Debtor and the
27 location of missing assets. This conduct has spawned a mountain of litigation which has the
28 potential to undermine the efficient and economic administration of the bankruptcy case. For these

1 reasons, the Trustee seeks the production of records to investigate and determine the underlying
2 facts.

3 The proposed examination cannot proceed at this time under Bankruptcy Rule 7030 or 9014
4 because Debtor is not a party to any pending adversary proceeding or contested matter that
5 encompasses the matters addressed in this Motion.

6 **V.**

7 **CONCLUSION**

8 For the reasons set forth above, the Trustee respectfully requests that this Court enter an
9 order to be lodged consistent with the Motion herewith granting this Motion in its entirety and
10 (a) authorizing the Trustee, pursuant to Bankruptcy Rules 2004 and 9016, to issue a subpoena
11 substantially in the form attached hereto as **Exhibit I**, for the production of financial records
12 including supporting bank statements, copies of checks, and deposit slips and (b) answer written
13 questions on deposition; and (c) granting such other and further relief as this Court deems just and
14 proper.

15 Dated: January 9, 2024

PACHULSKI STANG ZIEHL & JONES LLP

16
17 By: /s/ Jeffrey P. Nolan

Jeffrey W. Dulberg

Jeffrey P. Nolan

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19 Attorneys for Bradley D. Sharp, Chapter 11
Trustee

DECLARATION OF BRADLEY D. SHARP

I, Bradley D. Sharp, declare:

1. I am the President and CEO of Development Specialists, Inc. (“DSI” or the “Firm”). I have personal knowledge of the facts stated in this Declaration, and if called as a witness, I could and would testify competently to these facts.

2. I make this declaration in support of the application (the “Application”) filed by the Trustee seeking an Order Authorizing the Production of Documents and Examination of Phoenix Life Insurance Company Pursuant to Fed. R. Bankr. P. 2004.

3. I met with the Debtor on or about May 31, 2023. At that time, the Debtor indicated he did not maintain personal financial records for the various assets disclosed on his schedules. The Debtor claimed he did not maintain records for his financial affairs.

I declare under penalty of perjury pursuant to the laws of the United States that the foregoing is true and correct.

Executed this ____ day of January, 2024, at San Juan Capistrano, California.

Bradley D. Sharp
Chapter 11 Trustee

DECLARATION OF NICHOLAS R. TROSZAK

I, Nicholas R. Troszak, declare:

1. I am a Managing Director at Development Specialists, Inc. (“DSI” or the “Firm”). I have personal knowledge of the facts stated in this Declaration, and if called as a witness, I could and would testify competently to these facts.

2. I make this declaration in support of the application (the “Application”) filed by the Trustee seeking an Order Authorizing the Production of Documents and Examination of Phoenix Life Insurance Company Pursuant To Fed. R. Bankr. P. 2004.

3. On or about May 31, 2023, I met with the Debtor. I asked him a number of questions about the maintenance of business records. The Debtor indicated he did not maintain physical or hard copies of his personal financial records.

I declare under penalty of perjury pursuant to the laws of the United States that the foregoing is true and correct.

Executed this ___ day of January, 2024, at Los Angeles, California.

Nicholas R. Troszak

DECLARATION OF JEFFREY P. NOLAN

I, Jeffrey P. Nolan, declare:

1. I am an attorney at law duly licensed to practice before all courts in the State of California. I am an attorney with the law firm of Pachulski Stang Ziehl & Jones LLP, attorneys of record for Bradley D. Sharp, Chapter 11 Trustee of the estate of Leslie Klein ("Klein" or the "Debtor"). The facts stated herein are of my own personal knowledge, or made known to me from a review of the files and pleadings in this action which are maintained in the ordinary course of business. If called upon as a witness to any facts set forth herein, I could and would competently testify thereto.

2. The examination requested through the Motion cannot proceed under Federal Rules of Bankruptcy Procedure 7030 or 9014 because no adversary proceeding or contested matter is currently pending encompassing the matters subject to inquiry.

3. Attached hereto as **Exhibits A**, is a true and correct copy of the Complaint for (1) Fraud; (2) Breach of Fiduciary Duty; (3) Conversion; (4) Money Had And Received; (5) Unjust Enrichment and (6) Accounting filed in the Superior Court of the State of California, Case Number 21 ST CV 31915, Vendriger, et al v. Klein.

4. Attached hereto as **Exhibit B**, is a true and correct copy of the Report and Recommendation of the Court-Appointed Referee on Examination and Adjudication of the Trustee's First, Second, and Third Accountings On Each of the Twenty-Four Trusts At Issue For the Trust Periods September 10, 1996-June 30, 2013, July 1, 2013-December 31, 2016 And January 1, 2017-September 30, 2018, as attached to proof of claim 13-2 filed by the Menlo Parties in the United States Bankruptcy Court, Central District of California, in case number 2:23-bk-10990-SK.

5. Attached hereto as **Exhibit C** is a true and correct copy of the Vago v. Klein Complaint to Determine the Nondischargeability of Certain Debts owed by Debtor Leslie Klein to Erica and Joseph Vago Pursuant to 11 U.S.C. §523, and To Deny Discharge Pursuant to Section 727(A)(12) and filed in the United States Bankruptcy Court, Central District of California, in case number 2:23-bk-10990-SK.

6. Attached hereto as **Exhibit D** is a true and correct copy of the Mermelstein v. Klein Complaint for Nondischargeability of Debt Pursuant to 11 U.S.C. §523(a)(2)(A), 11 U.S.C. §523(a)(4) & 11 U.S.C. §523(a)(6) & for Denial Of Discharge Pursuant to 11 USC §727(a)(2)(A); 11 USC §727(a)(2)(B); 11 USC §727(a)(3); 11 USC §727(a)(4)' 11 USC §727(a)(5), and filed in the United States Bankruptcy Court, Central District of California, in case number 2:23-bk-10990-SK.

7. Attached hereto as **Exhibits E** is a true and correct copy of the Decision and Order, Stipulated Surrender of License and Order and Accusation issued by the California Board of Accountancy, Department of Consumer Affairs, State of California, as printed from the state website.

8. Upon information and belief, the Debtor maintained a business relationship with Phoenix Life Insurance Company and maintained accounts based upon my review of records.

9. As counsel to the Trustee, we requested financial records and bank statements from the Debtor on June 8, 2023. (See Correspondence dated June 8, 2023, attached hereto as **Exhibit F**) On June 28, 2023, the Trustee again requested the bank statements. (See email dated June 28, 2023, attached hereto as **Exhibit G**). The Trustee made the same request when introduced to new counsel for the Debtor on July 10, 2023. (See email dated July 10, 2023, attached hereto as **Exhibit H**). No bank statements or financial records have been received from the Debtor in response thereto.

10. Pursuant to Local Bankruptcy Rule 2004-1(a), I contacted Phoenix Life Insurance Company to arrange for a mutually agreeable date, time, place, and scope of the examination sought in the Motion. The Proposed Examinee will produce the documents requested on reasonable notice to its subpoena process serving unit. Notice of this Motion has been given to the Debtor/consumer and the United States Trustee's Office.

11. The Trustee therefore requests authority to issue a subpoena to the Proposed Examinee substantially in the form attached hereto as **Exhibit I**.

1 I declare under penalty of perjury pursuant to the laws of the United States that the foregoing
2 is true and correct.

3 Executed this 9th day of January, 2024, at Los Angeles, California.

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5 /s/ Jeffrey P. Nolan

6 Jeffrey P. Nolan
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